UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEALERWING LLC, Plaintiff, -against- JON LERNER, Defendant.	Case No. 21-cv-06429 **COMPLAINT**

Plaintiff Dealerwing LLC, as and for its Complaint, alleges as follows:

INTRODUCTION

1. This action stems from the wrongful and improper conduct of Defendant, who has schemed to pirate away Plaintiff's customer base and misappropriate Plaintiff's trade secrets and confidential information in violation of written agreements and in breach of applicable law.

2. Defendant is a former executive and key member of Plaintiff's team whose affiliation with Plaintiff has ended, and who has subsequently formed a new business engaged in direct competition with Plaintiff.

3. Upon information and belief, Defendant began his scheme to unlawfully compete while he was still affiliated with Plaintiff, using the access granted to him to pirate Plaintiff's trade secrets and other confidential information, including critical information about Plaintiff's customers, pricing, methods of doing business, proprietary databases and customers' proprietary databases entrusted in secrecy to Plaintiff, that a competitor could use (and, upon information and belief, is using) to unlawfully compete with Plaintiff's business.

4. Both before and since his separation from Plaintiff, Defendant has breached his contractual and other obligations imposed upon him by virtue of agreements and/or the statutory and common law duties owed to Plaintiff under applicable state and federal statutory and common

law by virtue of his affiliation with Plaintiff, and the access he had to Plaintiff's trade secrets and confidential information,customer goodwill and other valuable business assets.

5. Plaintiff is now aware of at least 12 customers that have terminated their business relationships with Plaintiff, and who are now doing business with Defendant. Plaintiff is also aware of several other customers who have been contacted by Defendant for the purposes of soliciting those customers' business for his own competing venture.

6. Through this action, Plaintiff seeks to prevent Defendant from continuing his wrongful conduct and it also seeks to recover the damages sustained due to said conduct.

PARTIES

7. Plaintiff is a Florida limited liability company with its principal place of business in Winter Springs, Florida.

8. Defendant is an individual who resides in Armonk, New York and is operating his competing business from that location.

9. Defendant has also done business as J. Lerner Assoc. Ltd., a dissolved New York corporation, and J. Lerner Assoc. Inc., a non-existent entity.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this matter pursuant to § 28 U.S.C. § 1331 because this Complaint includes claims for Defendant's violations of the Defend Trade Secret Act ("DTSA"), 18 U.S.C. § 1832, *et seq*.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a significant portion of the events which form the basis of this Complaint arose in the geographical area which is contained within this District.

FACTUAL BACKGROUND

12. Plaintiff is an automotive marketing company that focuses on direct and digital marketing tactics for dealership service and sales departments. It has a proven track record of increasing automotive service department traffic and customer retention on a national level with multiple Original Equipment manufacturers ("OEMs") from domestic to imports to luxury brands. Dealerwing provides customized service marketing solutions and a unique credit score application for all OEMS, supported by its proprietary software platform.

13. Plaintiff has expended, and continue to expend, significant resources to develop the confidential and trade secret information created in connection with the development of their business and customer relationships.

14. For example, Plaintiff is continually developing new, innovative solutions to meet customers' needs. Plaintiff accomplishes this by investing considerable time and resources into understanding each customer's business so that they can create customized solutions.

15. In order to protect Plaintiff's trade secret and confidential information, Plaintiff employs significant measures to protect confidential, proprietary, and trade secret information, including utilizing non-disclosure agreements that prohibit the use and disclosure of trade secret or confidential information both during and after affiliation with Plaintiff.

16. On August 7, 2015, Defendant, as Vice-President of the NE Region, signed a non-disclosure agreement that governs the parties' relationship in respect of trade secrets and confidential information (the "NDA"). That agreement was signed with Rebuild America Auto Program, LLC ("RAAP").

17. RAAP and Plaintiff executed an Assignment and Assumption Agreement, effective January 1, 2018, under which Plaintiff succeeded to all of RAAP's rights in the Agreement with

respect to Defendant. Thereafter, Defendant continued to act as Vice-President of Plaintiff and he remained bound by the terms of the NDA.

18. The NDA bars Defendant from usingand/or disclosing trade secret and confidential information other than for the benefit of Plaintiff.

19. Further, Plaintiff password protects its proprietary programs and systems and only provides access to information on a "need-to-know" basis.

20. To the extent Plaintiff's personnel use personal devices for work purposes, they are required to access Plaintiff's computer systems through a secure remote connection.

21. Under the NDA, Defendant acknowledged that he would have access to "Proprietary Information" belonging to Plaintiff, and he agreed that he would not disclose or use same.

22. Defendant agreed further to restrictions on his ability to compete with Plaintiff following the end of the parties' relationship. Specifically, Defendant agreed that for a three-year period he would not, in any manner, represent, provide services, or engage in any aspects of business that would be deemed similar in nature to Plaintiff's business for the benefit of himself or any third party engaged in a similar business, and that he would not solicit any customers for the same time period.

23. Defendant agreed that, if he improperly used or disclosed Proprietary Information, Plaintiff would sustain irreparable injury not compensable by money damages alone such that Plaintiff would be entitled to equitable relief.

24. The NDA further restricted Defendant's ability to solicit Plaintiff's personnel to leave Plaintiff and engage in a competing venture.

25. Defendant continued to serve as Vice-President of Plaintiff until his resignation on or about April 30, 2021.

26. During Defendant's employment, he played a vital role as Vice-President including by virtue of his direct contact with customers to obtain and service their business, by virtue of which he was privy to all of their needs and requirements and how those needs and requirements were met utilizing Plaintiff's trade secrets and proprietary and confidential information.

27. Plaintiff has learned that, subsequent to Defendant's resignation as Vice-President, Plaintiff has launched his own business which directly competes with Plaintiff's business in violation of his obligations under the NDA not to engage in such competition, and on information and belief Defendant is using Plaintiff's trade secrets and proprietary information to engage in such competition successfully.

28. Upon learning of Defendant's improper conduct, Plaintiff caused a cease and desist letter to be sent to Defendant on or about June 1, 2021.

29. Defendant has failed and refused to respond to the cease and desist letter by committing to discontinue his unlawful conduct and on information and belief his brazen conduct continues unabated such that additional customers are at risk.

30. The cease and desist letter also demanded that Defendant return his company laptop, which contains Plaintiff's trade secrets and proprietary information that Defendant is using improperly to complete with Plaintiff. Defendant has failed and refused to return the laptop and on information and belief he is using Plaintiff's information contained thereon to carry out his unlawful conduct.

31. Several former customers have advised Plaintiff that they are terminating their relationships with Plaintiff and instead becoming customers of Defendant. Defendant could not

possibly compete for and service those customers without utilizing Plaintiff's trade secrets and proprietary information, including Plaintiff's proprietary databases and customers' proprietary databases.

32. Upon information and belief, Defendant continues to aggressively target Plaintiff's other customers, seeking to capitalize on the relationships formed while employed by Plaintiff, the goodwill Plaintiff has built with these customers, and the trade secret and confidential information belonging to Plaintiff.

33. Upon Information and belief, Defendant has also violated the NDA by soliciting Joseph Yurman, an independent contractor who had formerly worked for Plaintiff, with Defendant, to join him in his competing venture and to violate his own obligations owed to Plaintiff by doing so. Yurman is subject to contractual restrictions similar to Plaintiff's that restrict his ability to utilize Plaintiff's proprietary information and to engage in a competitive business.

34. Defendant and Yurman conspired with each other to engage in Defendant's competing venture during the period each was still affiliated with Plaintiff.

COUNT I

Misappropriation of Trade Secrets under the Defend Trade Secret Act,18 U.S.C. § 1832, et seq.

35. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

36. As described in detail in the paragraphs above, Defendant has acquired access to and knowledge of Plaintiff's trade secrets by virtue of his former affiliation with Plaintiff.

37. Plaintiff's trade secrets include, but are not limited to, customer identities, Plaintiff created proprietary databases, customer owned databases entrusted to Plaintiff for safekeeping, and methodologies for servicing auto dealers that derive independent economic value by not being

available to the general public, could not be originated by another party, and were compiled at great expense to Plaintiff.

38. Competitors and intermediaries such as Defendant can profit from the use and disclosure of this trade secret information, as Defendant is now doing.

39. Plaintiff's trade secrets are related to a product or service used in or intended for use in interstate commerce. Plaintiff's business is national and extends to customers in 23 states.

40. Plaintiff has taken reasonable measures under the circumstances to maintain the secrecy of its trade secrets.

41. As set forth at length herein, Defendant has misappropriated Plaintiff's tradesecrets by using and disclosing, and/or will continue to use and/or disclose, Plaintiff's trade secrets to unjustly benefit himself without Plaintiff's express or implied consent.

42. At the time of the use and disclosure, Defendant knew and/or had reason to know that Plaintiff's trade secrets had been derived and acquired through improper means.

43. Defendant has engaged in the foregoing conduct intending or knowing that it would injure and/or harm Plaintiff.

44. Defendant's conduct has been willful and malicious and undertaken with reckless indifference to Plaintiff's rights.

45. Plaintiff has suffered and will continue to suffer irreparable injury in addition to monetary damages as a direct and proximate result of Defendant's conduct in an amount which cannot be reasonably ascertained at this time.

46. Unless enjoined by this Court, Defendant will continue his unlawful actions and Plaintiff will continue to be irreparably harmed.

COUNT II

Breach of Contract

47. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

48. As set forth in detail above, Defendant entered into a valid and enforceable NDA.

49. The NDA is supported by valuable and adequate consideration and was voluntarily executed by Defendant.

50. The restrictions in the NDA were intended to protect Plaintiff's customer good will, their substantial relationships with customers,their trade secrets and confidential information, and other valid business interests. The restrictions are reasonably necessary for Plaintiff's protection.

51. As set in detail above, Defendant has materially breached (and is actively still breaching) the NDA and his conduct has been knowing, willing, voluntary, and intended to harm Plaintiff in its business affairs.

52. Plaintiff has suffered and will continue to suffer irreparable injury in addition to monetary damages as a direct and proximate result of Defendant's conduct in an amount which cannot be reasonably ascertained at this time.

53. Unless enjoined by this Court, Defendant will continue his unlawful actions and Plaintiff will continue to be irreparably harmed.

COUNT III

Misappropriation of Trade Secrets under New York Common Law

54. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

55. As described in detail in the paragraphs above, by virtue of Defendant's activity as Plaintiff's Vice-President and his having entered in contracts with customers on Plaintiff's behalf and being integrally involved in serving those customers, Defendant acquired access to and knowledge of Plaintiff's trade secrets by virtue of his integral role as an officer and integral part of Plaintiff's team.

56. Plaintiff has taken reasonable and appropriate measures under the circumstances to maintain thesecrecy of its trade secrets.

57. As set forth at length herein, Defendant has exploited his fiduciary position with Plaintiff in order to misappropriate Plaintiff's tradesecrets and he has used and disclosed, and/or will continue to use and/or disclose, Plaintiff's trade secrets to unjustly benefit himself and his new business without Plaintiff's express or implied consent and to Plaintiff's detriment.

58. At the time of the use and disclosure, Defendant knew and/or had reason to know that he had acquired Plaintiff's trade secrets through improper means.

59. Defendant engaged in the foregoing conduct intending or knowing that it would injure and/or harm Plaintiff.

60. Defendant's conduct has been willful and malicious and undertaken with reckless indifference to Plaintiff's rights.

61. Plaintiff has suffered and will continue to suffer irreparable injury in addition to monetary damages as a direct and proximate result of Defendant's conduct in an amount which cannot be reasonably ascertained at this time.

62. Unless enjoined by this Court, Defendant will continue his unlawful actionsand Plaintiff will continue to be irreparably harmed.

COUNT IV
Tortious Interference with Contract

63. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

64. Plaintiff has entered into contracts with its customers under which the customers are restricted from working with third parties which provide the same services for up to a year.

65. Plaintiff has entered into contracts with personnel such as Yurman under which such personnel are restricted from using Plaintiff's trade secrets and proprietary information and from competing against Plaintiff subsequent to the termination of their affiliation with Plaintiff.

66. Defendant has knowingly, intelligently, and maliciously interfered withPlaintiff's contracts with its customers by inducing them to contract with him instead of Plaintiff.

67. Defendant has knowingly, intelligently, and maliciously interfered with Plaintiff's contract with Yurman by inducing him to breach his agreement with Plaintiff by misusing Plaintiff's information and to compete with Plaintiff in affiliation with Defendant.

68. Defendant's interference with Plaintiff's contractual rights has caused Plaintiff to lose customers and is likely to continue to do so if said conduct continues. In addition, Defendant's conduct imperils the confidentiality and secrecy of Plaintiff's proprietary and confidential information that, once disseminated to a competitor, will lose its inherent value.

69. Plaintiff has suffered and will continue to suffer irreparable injury in addition to monetary damages as a direct and proximate result of Defendant's conduct in an amount which cannot be reasonably ascertained at this time.

70. Unless enjoined by this Court, Defendant will continue his unlawful actions and Plaintiff will continue to be irreparably harmed.

COUNT V
Tortious Interference with Prospective Economic Benefit

71. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

72. Plaintiff has undertaken great effort to safeguard its confidential and proprietary information and trade secrets, and minimize the business disruption caused by employees interfering with its customers and personnel. Plaintiff developed a reasonable expectation that the investments it has made in its personnel and the goodwill developed with customers would bear economic fruit. Plaintiff has maintained longstanding relationships with customers as a result of the significant efforts Plaintiff has undertaken in this regard.

73. Recognizing the great potential and value of Plaintiff's efforts, Defendant has purposefully and maliciously interfered with Plaintiff's ability to realize the economic profits of its successful business efforts maliciously and using wrongful means as identified hereinabove.

74. Upon information and belief, the customers Plaintiff has lost due to Defendant's unlawful interference were satisfied with Plaintiff's services, as evidenced by the fact that many of the customers had been customers for more than four years, such that the only probable reason for their having abandoned Plaintiff was Defendant's interference, as described in detail in the paragraphs above.

75. Plaintiff has suffered and will continue to suffer irreparable injury in addition to monetary damages as a direct and proximate result of Defendant's conduct which cannot be reasonably ascertained at this time.

76. Unless restrained by this Court, Defendant will continue such unlawful actions and Plaintiff will continue to be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and grant the following relief:

a. A preliminary injunction and permanent injunction:

i. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order fromviolating, or participating in the violation of, any of the terms of the NDA;

ii. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order from contacting, soliciting, attempting to contact or solicit, and/or doing business with any current customer of Plaintiff or any entity that has been a customer of Plaintiff;

iii. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order from utilizing, disclosing or misusing any trade secrets or confidential information belonging to Plaintiff, including, without limitation, customer and prospect lists, marketing, sales and strategic plans, product research, customer purchasing histories, pricing information, product information, product designs, product applications, technical processes, product test and performance results, non-public internal financial information, and customer files, and databases belonging to customers;

iv. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order from transferring to any third party any trade secrets or confidential information belonging to Plaintiff including, without limitation, customer and prospect lists, marketing, sales and strategic plans, product research, customer purchasing histories, pricing information, product information, product designs, product applications, technical processes, product test and performance results, non-public internal financial information, and customer files, and databases belonging to customers;

v. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order, from soliciting Plaintiff's employees for employment with Defendant or any other competitor;

vi. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order, from circulating advertisements containing material misrepresentations and omissions;

vii. enjoining and restraining Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order, from making false, defamatory, and trade libelous statements about Plaintiff and its business;

viii. requiring Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order, to preserve, and not destroy, alter, delete, or relinquish control over to any third party, any and all copies and versions (whether hard copy, native, or electronic) of any documents or electronically-stored information (including but not limited to emails, text messages, communications over social media and any other electronic, typewritten, handwritten, recorded, or printed matter of any kind) relating to the subject matter of this lawsuit;

ix. requiring Defendant, as well as his agents, employees, employer, or any other individual or entity having knowledge or notice of the Court's Order, to return all of Plaintiff's property including the laptop with all content intact, and any other computer and any other electronic, computer or storage devices of any kind;

x. requiring Defendant to identify any and all electronic devices that have at any times been used to access the Plaintiff's trade secrets and proprietary information, and to submit such electronic devices to a vendor of Plaintiff's choosing, at Defendant's expense, for a forensic examination aimed at discovering the extent to which the trade secrets have been downloaded, copied, printed, accessed and/or used;

b. An order granting preliminary and permanent injunctive relief in accord with the paragraphs (a) and (b) above, and as separately may be requested at a preliminary injunction hearing and any trial;

c. An order requiring Defendant to provide an equitable accounting of all revenues, profits and other considerations received in connection with any business he has done with any of Plaintiff's customers;

d. An order awarding Plaintiff its actual damages in an amount to be determined at trial;

e. Disgorgement of all profits made by Defendant and all ill-gotten gains received by Defendant;

f. An order awarding Plaintiff pre- and post-judgment interest as allowed by law,as well as its attorneys' fees and costs of this action; and

g. An order awarding any and all other available damages, including punitive damages, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 28, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Peter T. Shapiro
Peter T. Shapiro
77 Water Street
New York, New York 10005
212.232.1300
Peter.shapiro@lewisbrisbois.com

Attorneys for Plaintiff